

E-filed 5/18/07

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 4820-3-2-9
 Attorneys for Defendant/Cross-Complainant
 SOUTHWEST SIGNS, LLC

IN THE UNITED STATES DISTRICT COURT
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ARBSLAND,

Plaintiff,

vs.

SOUTHWEST SIGNS, THE HOME DEPOT,
 INC.; and DOES 1-100,

Defendants.

SOUTHWEST SIGNS, LLC,

Cross-Complainant,

vs.

THE HOME DEPOT, SIGNS HAWAII, SIGN
 ART, L. MORIGUCHI, INC., and DOES 1
 through 50, inclusive,

Cross-Defendants.

No. C06-04191 JF

[PROPOSED] ORDER

**RE: LEAVE OF COURT FOR
 SOUTHWEST SIGNS, LLC TO FILE
 FIRST AMENDED CROSS-COMPLAINT
 AGAINST GELcore, LLC**

Pursuant to the stipulation of the parties to allow Defendant/Cross-Defendant/Cross-Complainant Southwest Signs, LLC leave of court to file First Amended Cross-Complaint to name GELcore, LLC as a Cross-Defendant in the instant action on the basis that, based on information and belief, GELcore, LLC designed and manufactured an electronic component of the alleged product which Plaintiff alleges caused him to sustain damages in this action.

1 The stipulation of the parties is attached hereto as Exhibit A.

2 Defendant/Cross-Defendant/Cross-Complainant Southwest Signs, LLC's proposed
3 First Amended Cross-Complaint is attached hereto as Exhibit B.

4 GOOD CAUSE therefore appearing, Defendant/Cross-Defendant/Cross-Complainant
5 Southwest Signs, LLC is granted leave of Court to file First Amended Cross-Complaint to
6 name GELcore, LLC as a Cross-Defendant in the instant action.

7 **IT IS SO ORDERED.**

8 Dated: 5/18/07
9


JEREMY FOGEL
United States District Judge

EXHIBIT A

1 DENNIS F. MORIARTY (BAR NO. 37612)
ANDREW S. WERNER (BAR NO. 135795)
2 JOSE A. MONTALVO (BAR NO. 184484)
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4 Telephone: (415) 391-1113
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5 4820-3-2-9
Attorneys for Defendant/Cross-Complainant
6 SOUTHWEST SIGNS, LLC

7
8 IN THE UNITED STATES DISTRICT COURT
9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 MICHAEL ARBSLAND,
11 Plaintiff,

12 vs.

13 SOUTHWEST SIGNS, THE HOME DEPOT,
14 INC.; and DOES 1-100,
15 Defendants.

16 SOUTHWEST SIGNS, LLC,
17 Cross-Complainant,

18 vs.

19 THE HOME DEPOT, SIGNS HAWAII, SIGN
20 ART, L. MORIGUCHI, INC., and DOES 1
through 50, inclusive,

21 Cross-Defendants.
22

No. C06-04191 JF

STIPULATION TO ALLOW
SOUTHWEST SIGNS, LLC LEAVE OF
COURT TO FILE FIRST AMENDED
CROSS-COMPLAINT

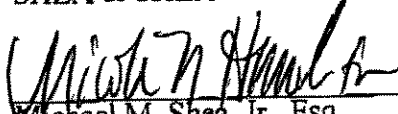
23 The undersigned hereby stipulate that Defendant/Cross-Complainant Southwest
24 Signs, LLC may file its First Amended Cross-Complaint in order to name
25
26
27
28

1 GELcore, LLC as a Cross-Defendant in the instant action.

2 **IT IS SO STIPULATED.**

3 DATED: 5-3-07

SHEA & SHEA

4 
5 Michael M. Shea, Jr., Esq.
6 Attorneys for Plaintiff

7 DATED: _____

JENKINS, GOODMAN, NEWMAN &
HAMILTON LLP

9
10 Pavan L. Rosati, Esq.
11 Attorneys for DEFENDANT/CROSS-
12 DEFENDANT HOME DEPOT U.S.A., INC.

13 DATED: _____

ADLER LAW GROUP

14
15 Elizabeth Sullivan, Esq.
16 Attorneys for DEFENDANT/CROSS-
17 CROSS-DEFENDANT
18 SIGNS HAWAII

19 DATED: _____

CESARI, WERNER MORIARTY

20
21 Andrew S. Werner, Esq.
22 Attorneys for DEFENDANT/CROSS-
23 CROSS-DEFENDANT
24 SOUTHWEST SIGNS, LLC

25 DATED: _____

LAPLANTE, SPINELLI, DONALD & NOTT

26 Domenic D. Spinelli, Esq.
27 Attorneys for CROSS-DEFENDANT
28 L. MORIGUCHI, INC. dba SIGN ART

1 GELcore, LLC as a Cross-Defendant in the instant action.

2 IT IS SO STIPULATED.

3 DATED: _____

SHEA & SHEA

5 Michael M. Shea, Jr., Esq.
6 Attorneys for Plaintiff

7 DATED: April 9, 2007

JENKINS, GOODMAN, NEWMAN &
HAMILTON LLP

9 Pavan L. Rosati
10 Pavan L. Rosati, Esq.
11 Attorneys for DEFENDANT/CROSS-
12 DEFENDANT HOME DEPOT U.S.A., INC.

13 DATED: _____

ADLER LAW GROUP

15 Elizabeth Sullivan, Esq.
16 Attorneys for DEFENDANT/CROSS-
17 CROSS-DEFENDANT
18 SIGNS HAWAII

19 DATED: 5/8/07

CESARI, WERNER MORIARTY

21 Andrew S. Werner
22 Andrew S. Werner, Esq.
23 Attorneys for DEFENDANT/CROSS-
24 CROSS-DEFENDANT
25 SOUTHWEST SIGNS, LLC

26 DATED: 5-8-07

27 Domenic D. Spinelli
28 Domenic D. Spinelli, Esq.
Attorneys for CROSS-DEFENDANT
L. MORIGUCHI, INC. dba SIGN ART

1 GELcore, LLC as a Cross-Defendant in the instant action.

2 IT IS SO STIPULATED.

3 DATED: _____

SHEA & SHEA

5 Michael M. Shea, Jr., Esq.
6 Attorneys for Plaintiff

7 DATED: _____

JENKINS, GOODMAN, NEWMAN &
HAMILTON LLP

10 Pavza L. Rosati, Esq.
11 Attorneys for DEFENDANT/CROSS-
12 DEFENDANT HOME DEPOT U.S.A., INC.

13 DATED: 4-9-07

ADLER LAW GROUP

14 Elizabeth A. Sullivan
15 Elizabeth Sullivan, Esq.
16 Attorneys for DEFENDANT/CROSS-
17 CROSS-DEFENDANT
18 SIGNS HAWAII

19 DATED: _____

CESARI, WERNER MORIARTY

21 Andrew S. Warner, Esq.
22 Attorneys for DEFENDANT/CROSS-
23 CROSS-DEFENDANT
24 SOUTHWEST SIGNS, LLC

25 DATED: _____

LAPLANTE, SPINELLI, DONALD & NOTT

26 Domenic D. Spinelli, Esq.
27 Attorneys for CROSS-DEFENDANT
28 L. MORIGUCHI, INC. dba SIGN ART

EXHIBIT B

ARBSLAND vs. SOUTHWEST
SIGNS, et al.**SUMMONS ON CROSS-COMPLAINT**
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: CROSS-DEFENDANTS**(AVISO AL DEMANDADO):**THE HOME DEPOT, SIGNS HAWAII, SIGN ART, L. MORIGUCHI,
INC., GELcore, LLC, and Does 1 through 50, inclusiveFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**YOU ARE BEING SUED BY PLAINTIFF: CROSS-COMPLAINANT****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SOUTHWEST SIGNS, LLC

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
280 S. 1st Street, Room 2112
San Jose, CA 95113CASE NUMBER:
(Número del Caso): C06-04191 PVT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DENNIS F. MORIARTY, ESQ./SBN37612

(415) 391-1113 (415) 391-4626

ANDREW S. WERNER, ESQ./SBN135795

360 Post Street, Fifth Floor

San Francisco, CA 94108

4820-3-2-9

DATE:

Clerk, by _____, Deputy

(Fecha)

(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

[SEAL]

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
- ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
- ☐ other (specify):

- ☐ by personal delivery on (date):

Page 1 of 1

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 Attorneys for Defendant/Cross-Complainant
 SOUTHWEST SIGNS, LLC

IN THE UNITED STATES DISTRICT COURT
 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ARBSLAND,

Plaintiff,

vs.

SOUTHWEST SIGNS, THE HOME DEPOT,
 INC.; and DOES 1-100,

Defendants.

SOUTHWEST SIGNS, LLC,

Cross-Complainant,

vs.

THE HOME DEPOT, SIGNS HAWAII, SIGN
 ART, L. MORIGUCHI, INC., GELcore, LLC
 and DOES 1 through 50, inclusive,

Cross-Defendants.

) No. C06-04191 PVT

) **FIRST AMENDED CROSS-COMPLAINT**
) **FOR COMPARATIVE NEGLIGENCE,**
) **EQUITABLE INDEMNITY,**
) **CONTRIBUTION, AND DECLARATORY**
) **RELIEF-DUTY TO DEFEND**

COMES NOW SOUTHWEST SIGNS, LLC, pursuant to F.R.C.P. 14, and names
 GELcore, LLC as a third-party defendant For Comparative Negligence, Equitable Indemnity,
 Contribution, And Declaratory Relief-Duty To Defend.

1
2 **INTRODUCTION**

3 Pursuant to FRCP 13, 19, and 20, SOUTHWEST SIGNS, LLC, and for causes of
4 action against said cross-defendants listed above alleges as follows:

5 **GENERAL ALLEGATIONS**

6 1. Cross-Complainant incorporates herein by reference the complaint
7 filed by plaintiff MICHAEL ARBSLAND in the United States District Court, Northern
8 District of California, Case No. C06-04191 PVT for injuries allegedly sustained on October
9 1, 2003 as a result of working on a HOME DEPOT sign. Said complaint is incorporated
10 herein only for reference and the allegations of the complaint are expressly denied.

11 2. Cross-complainants are informed and believe and thereon allege
12 DOES 1 through 50, inclusive, are each business organizations, form unknown, and/or
13 individuals authorized to do business in the State of California and/or the State of Hawaii
14 and/or State of Ohio at all times referenced in the complaint and cross-complaint.

15 3. That each individual named in this cross-complaint is authorized to do
16 business in the State of California and/or the State of Hawaii and/or State of Ohio at all times
17 referenced in the complaint in this action and in this cross-complaint, and doing business
18 under their own or fictitious name, including but not limited to those set forth in this cross-
19 complaint.

20 4. Cross-complainant is informed and believes that cross-defendant THE
21 HOME DEPOT, INC., doing business as a corporation, was and is at all relevant times a
22 corporation qualified to do business and actually doing business in the State of California, at
23 all times referenced in the complaint in this action and in this cross-complaint.

24 5. Cross-complainant is informed and believes that cross-defendant
25 SIGNS HAWAII, business form unknown, was and is qualified to do business and actually
26 doing business in the State of Hawaii at all times referenced in the complaint in this action
27 and in this cross-complaint.

1 6. Cross-complainant is informed and believes that cross-defendant
2 SIGN ART, business form unknown, was and is qualified to do business and actually doing
3 business in the State of Hawaii at all times referenced in the complaint in this action and in
4 this cross-complaint.

5 7. Cross-complainant is informed and believes that cross-defendant L
6 MORIGUCHI, INC., doing business as a corporation, was and is at all relevant times a
7 corporation qualified to do business and actually doing business in the State of Hawaii, at all
8 times referenced in the complaint in this action and in this cross-complaint.

9 8. Cross-complainant is informed and believes that cross-defendant
10 GELcore, LLC, doing business as a Limited Liability Company, was and is at all relevant
11 times a corporation qualified to do business and actually doing business in the State of Ohio,
12 at all times referenced in the complaint in this action and in this cross-complaint.

13 9. Cross-complainant does not know the true names of cross-defendants,
14 DOES 1 through 50, inclusive, and, therefore, sues said cross-defendants by such fictitious
15 names and prays for leave to amend this cross-complaint when their true names and
16 capacities have been ascertained.

17 10. Cross-complainant is informed and believes and thereon alleges that at
18 all times herein mentioned, cross-defendants DOES 1 through 50, inclusive, and each of
19 them, are either individuals or business entities licensed to and doing business in the County
20 of Stanislaus and are responsible directly or indirectly or vicariously for the events and
21 happenings herein referred to and caused or are responsible for the damages sustained by
22 plaintiffs, if any, and by cross-complainant.

23 11. Cross-complainant is informed and believes and thereon alleges that at
24 all times herein mentioned, each of the cross-defendants, named and fictitious, were the
25 agents and/or employees of all the other cross-defendants and were acting within the scope of
26 said agency and/or employment.

27 **FIRST CAUSE OF ACTION**
28 **(Comparative Negligence)**

12. Cross-complainant realleges and re-incorporates herein by reference each and every allegation set forth in paragraphs 1 through 11 as though fully set forth herein.

13. Plaintiff has alleged in his complaint damages as a result of a defective HOME DEPOT sign and has further alleged in his complaint that the HOME DEPOT sign was defectively wired. It is further alleged that SOUTHWEST SIGNS manufactured the sign that was defectively wired.

14. Cross-complainant at all times denies any and all liability in connection with the action-in-chief, but in the event plaintiff establishes liability in connection with the action-in-chief, cross-complainant alleges that such liability exists, if at all, only as a direct and proximate result of acts, omissions, breaches of contract, and negligence of cross-defendants, and each of them.

15. Cross-complainant is entitled to as a matter of law to a judicial determination, apportioning and affixing the comparative negligence of each cross-defendant for any damages awarded to plaintiffs in this action.

16. An actual controversy now exists between cross-complainant and cross-defendants, and each of them, as to the rights of indemnity and comparison of negligence owing to cross-complainant by cross-defendants in that cross-complainant contends an indemnity obligation exists whereas cross-defendants deny that such an indemnity obligation exists. Multiplicity of actions will be avoided by resolution of this cross-complaint and the legal action as that filed by plaintiff.

SECOND CAUSE OF ACTION AGAINST ALL CROSS-DEFENDANTS
(Equitable Indemnity)

17. Cross-complainant realleges and re-incorporates herein by reference each and every allegation set forth in paragraphs 1 through 16 as though fully set forth herein.

18. Cross-complainant is informed and believes and thereon alleges that if cross-complainant is found to be liable for the damages, if any, allegedly sustained by

1 plaintiff, cross-defendants, and each of them, have an equitable duty to indemnify cross-
2 complainant.

3 19. Accordingly, cross-defendants, and each of them, are required by law
4 to hold cross-complainant harmless and to indemnify it from the amount of any judgment or
5 settlement it may be compelled to pay and for cross-complainant's expenses, costs of suit,
6 attorney's fees, and other damages which cross-complainant incurs as a result of this action.

7 20. An actual controversy exists between cross-complainant and cross-
8 defendants, and each of them under the circumstances alleged above. Cross-complainant
9 contends that the cross-defendants are obligated to hold it harmless and reimburse it for any
10 judgment or settlement and all expenses, costs of suit, attorney's fees, and other damages
11 incurred. Cross-complainant is informed and believes and thereon alleges that cross-
12 defendants, and each of them, deny that they have this obligation. Multiplicity of actions will
13 be avoided by resolution of this cross-complaint in the same legal action as that filed by
14 plaintiff.

15
16 **THIRD CAUSE OF ACTION AGAINST CROSS-DEFENDANT**
(Contribution)

17 21. Cross-complainant realleges and reincorporates herein by reference
18 and each and every allegation set forth in paragraphs 1 through 20 as though fully set forth
19 herein.

20 22. Cross-complainant is informed and believes and thereon alleges that
21 the cross-defendants and DOES 1 through 50 are responsible in whole or in part for the
22 obligation, if any, owed to plaintiff. If plaintiff recovers against cross-complainant, the
23 cross-complainant is entitled to contribution among and from the cross-defendants, and each
24 of them, according to their share of the obligation, if any, owed to plaintiff by way of damage
25 or loss by settlement or otherwise or, in the alternative, for any judgment rendered against
26 cross-complaint.

FOURTH CAUSE OF ACTION AGAINST CROSS-DEFENDANT
(Declaratory Relief)

23. Cross-complainant realleges and reincorporates herein by reference each and every allegation set forth in paragraphs 1 through 22 as though fully set forth herein.

24. A dispute has arisen and an actual controversy now exists between cross-complainant and cross-defendants and DOES 1 through 50, and each of them, in that cross-complainant contends it is entitled to a present defense from the cross-defendants, and each of them, which cross-defendants, and each of them, deny such obligations.

25. Cross-complainant desires a judicial determination of their respective rights and cross-defendants' duties in connection with the matters herein alleged and requests a declaratory judgment as to the obligation of cross-defendants, and each of them, to cross-complainant.

WHEREFORE, cross-complainant prays judgment as hereinafter set forth:

1. For an order of the Court declaring the rights of cross-complainant to indemnify from the cross-defendants, and each of them, and in regards to all matters alleged in the pleadings to this action;

2. For declaratory judgment adjudicating the obligations of cross-defendants, and each of them, to defend cross-complainant in this action, to represent the interests of cross-complainant herein, to hold cross-complainant harmless from any judgment or settlement herein, and to reimburse cross-complainant for all costs, expenses, attorney's fees, and other damages incurred in defending this action and in prosecuting this cross-complaint;

3. For an order of the Court determining the comparative degree of fault for each party and the portion of their respective responsibility for plaintiff's damages, if any;

4. That cross-complainant is entitled to interest at the legal rate on the foregoing sum from all cross-defendants;

1 5. That cross-complainant is entitled to all costs of suit, including
2 attorney's fees incurred herein from all cross-defendants; and

3 6. For such other and further relief as the Court may deem just and
4 proper.

5
6 DATED: April 5, 2007

CESARI, WERNER AND MORIARTY

7
8 BY



DENNIS F. MORIARTY

ANDREW S. WERNER

Attorneys for Defendant /Cross-Complainant

SOUTHWEST SIGNS, LLC